

conducted business in the same location as its securities subsidiary or affiliate or shared the same or a similar name or logo with its securities subsidiary or affiliate has until not later than June 1, 1988 to comply with paragraphs (h)(2) and (3) of this section.

(2) *Content of Disclosure.* Sections 337.4(a)(2)(viii) and 337.4(c)(5) notwithstanding, any subsidiary and/or affiliate of an insured nonmember bank described in paragraph (h)(1) of this section must disclose to its customers and prospective customers that securities recommended, offered or sold by or through the subsidiary and/or affiliate are not FDIC insured deposits (unless otherwise indicated), that such securities are not guaranteed by, nor are they obligations of, the bank, and that the subsidiary and/or affiliate and the bank are separate organizations. The following or a similar statement will satisfy the disclosure requirement:

[name of affiliate/subsidiary] is not a bank and securities offered by it are not backed or guaranteed by any bank nor are they insured by the FDIC.

(3) *Timing and Placement of Disclosure.* In order for any subsidiary or affiliate of an insured nonmember bank described in paragraph (h)(1) of this section, to comply with paragraph (h)(2) of this section, the subsidiary/affiliate must make disclosure to its customers prominently, in writing, in opening account documents and periodically (at least semiannually) in customer statements. Disclosure may be made in confirmations in lieu of customer statements. In the case of joint advertisements, promotions, or solicitations and advertisements, promotions, or solicitations placed in bank communications, the advertisement, promotion, or solicitation must carry the requisite disclosure. Disclosure may be in a form and manner consistent with the advertising or other media utilized. Television or radio advertisements which do not exceed 30 seconds in length need not contain disclosure. Disclosure in television advertisements may either be spoken or displayed. All disclosures must be prominent and clearly legible. Disclosure in opening account documents and periodic disclosure in customer statements or confirmations is only required for one year after the

bank and its subsidiary/affiliate cease to jointly advertise, promote or solicit and for one year after advertisements, promotions, or solicitations are placed in bank communications with bank customers provided, however, that at least two semiannual disclosures must have been made during that one year period.

(4) It is considered an unsafe and unsound banking practice for an insured nonmember bank to:

(i) Share the same or a similar name or logo with a securities subsidiary that is required to be a bona fide subsidiary or an affiliate that is subject to the provisions contained in § 337.4(c);

(ii) Conduct business in the same location as any such subsidiary or affiliate;

(iii) Jointly advertise or promote its services in an advertisement, promotion, or solicitation concerning particular securities made by such a subsidiary or affiliate; or

(iv) Permit such a subsidiary or affiliate to place advertisements, promotions, or solicitations concerning particular securities in communications sent by the bank to the bank's customers, unless the disclosure requirements of paragraphs (h)(2) and (3) of this section, are met.

Failure to comply with paragraphs (h)(2) and (3) of this section, will subject the insured nonmember bank to appropriate administrative action including, but not necessarily limited to, an order to cease and desist use of the same or a similar name or logo as the subsidiary/affiliate, the conduct of business in the same location as the subsidiary/affiliate, the making of joint advertisements, or the placement of the subsidiary's/affiliate's promotions, advertisements, or solicitations in the bank's communications with its customers.

[49 FR 46723, Nov. 28, 1984, as amended at 51 FR 880, Jan. 9, 1986; 51 FR 45756, Dec. 22, 1986; 52 FR 47387, Dec. 14, 1987; 53 FR 597, Jan. 8, 1988; 53 FR 2223, Jan. 29, 1988]

§ 337.5 Exemption.

Check guaranty card programs, customer-sponsored credit card programs, and similar arrangements in which a bank undertakes to guarantee the obligations of individuals who are its retail

banking deposit customers are exempted from § 337.2: *Provided, however*, That the bank establishes the creditworthiness of the individual before undertaking to guarantee his/her obligations and that any such arrangement to which a bank's principal shareholders, directors, or executive officers are a party be in compliance with applicable provisions of Federal Reserve Regulation O (12 CFR part 215).

[50 FR 10495, Mar. 15, 1985]

§ 337.6 Brokered deposits.

(a) *Definitions.* For the purposes of this § 337.6, the following definitions apply:

(1) *Appropriate Federal banking agency* has the same meaning as provided under section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(2) *Brokered deposit* means any deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker.

(3) *Capital categories.* (i) For purposes of section 29 of the Federal Deposit Insurance Act and this § 337.6, the terms *well capitalized*, *adequately capitalized*, and *undercapitalized*,¹¹ shall have the same meaning as to each insured depository institution as provided under regulations implementing section 38 of the Federal Deposit Insurance Act issued by the appropriate federal banking agency for that institution.¹²

(ii) If the appropriate federal banking agency reclassifies a well capitalized insured depository institution as adequately capitalized pursuant to section 38 of the Federal Deposit Insurance Act, the institution so reclassified shall be subject to the provisions applicable to such lower capital category under this § 337.6.

¹¹The term *undercapitalized* includes any institution that is *significantly undercapitalized* or *critically undercapitalized* under regulations implementing section 38 of the Federal Deposit Insurance Act and issued by the appropriate federal banking agency for that institution.

¹²For the most part, the capital measure terms are defined in the following regulations: FDIC—12 CFR part 325, subpart B; Board of Governors of the Federal Reserve System—12 CFR part 208; Office of the Comptroller of the Currency—12 CFR part 6; Office of Thrift Supervision—12 CFR part 565.

(iii) An insured depository institution shall be deemed to be within a given capital category for purposes of this § 337.6 as of the date the institution is notified of, or is deemed to have notice of, its capital category, under regulations implementing section 38 of the Federal Deposit Insurance Act issued by the appropriate federal banking agency for that institution.¹³

(4) *Deposit* has the same meaning as provided under section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)).

(5) *Deposit broker.* (i) The term *deposit broker* means:

(A) Any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions, or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and

(B) An agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a pre-arranged loan.

(ii) The term *deposit broker* does not include:

(A) An insured depository institution, with respect to funds placed with that depository institution;

¹³The regulations implementing section 38 of the Federal Deposit Insurance Act and issued by the federal banking agencies generally provide that an insured depository institution is deemed to have been notified of its capital levels and its capital category as of the most recent date: (1) A Consolidated Report of Condition and Income or Thrift Financial Report is required to be filed with the appropriate federal banking agency; (2) A final report of examination is delivered to the institution; or (3) Written notice is provided by the appropriate federal banking agency to the institution of its capital category for purposes of section 38 of the Federal Deposit Insurance Act and implementing regulations or that the institution's capital category has changed. Provisions specifying the effective date of determination of capital category are generally published in the following regulations: FDIC—12 CFR 325.102. Board of Governors of the Federal Reserve System—12 CFR 208.32. Office of the Comptroller of the Currency—12 CFR 6.3. Office of Thrift Supervision—12 CFR 565.3.